

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DANIEL J. RHOADS,)	8:08CV227
)	
Plaintiff,)	
)	
v.)	MEMORANDUM
)	AND ORDER
STATE OF NEBRASKA, et al.,)	
)	
Defendants.)	

This matter is before the court on Plaintiff's Motion for New Trial and Redress. (Filing No. [92](#).) The court liberally construes this Motion as a Rule 59(e) Motion to Alter or Amend the court's July 23, 2009 Judgment. (Filing No. [91](#).) As set forth below, the Motion is denied.

Liberally construed, Plaintiff's Motion is brought pursuant to [Federal Rule of Civil Procedure 59\(e\)](#) and argues that the court erred when it entered its Order and Judgment on July 23, 2009. (Filing Nos. [90](#) and [91](#).) As set forth by the Eighth Circuit, "[Rule 59\(e\)](#) motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence. . . . Such motions cannot be used to introduce new evidence, tender new legal theories, or raise arguments which could have been offered or raised prior to entry of judgment." [U.S. v. Metro. St. Louis Sewer Dist.](#), [440 F.3d 930, 933 \(8th Cir. 2006\)](#) (internal citations and quotations omitted).

Here, Plaintiff asserts various arguments regarding the court's Memorandum Opinion which dismissed Plaintiff's monetary claims against Sandra Dougherty and J. Patrick Mullen¹ with prejudice on absolute judicial immunity grounds and

¹Plaintiff has named "J. Patrick Mullens" as a Defendant. It appears that this individual is actually J. Patrick Mullen. (Filing Nos. [19](#) and [20](#); *see also*

Plaintiff's remaining claims without prejudice because they implicated the validity of his conviction. (Filing Nos. [90](#) and [91](#).) Although Plaintiff's arguments are difficult to decipher, Plaintiff generally objects to the court's ruling and argues the merits of his claims. (Filing No. [92](#) at CM/ECF pp. 1-5.) Plaintiff also asks the court for an extension of time to allow him to prove that Dougherty and Mullen are not entitled to absolute judicial immunity. (*Id.* at CM/ECF p. 3.) Plaintiff could have advanced these arguments prior to dismissal, but he chose not to do so. As such, Plaintiff is not entitled to relief under [Rule 59\(e\)](#).

IT IS THEREFORE ORDERED that: Plaintiff's Motion to Alter or Amend (filing no. [92](#)) is denied.

December 1, 2009.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

<http://www.supremecourt.ne.gov/district-court/dist-judges-addr.shtml?sub3>.) For clarity, the court will use this individual's correct name.

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